STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**12/02/02**	Bill No:	**SCA 2**
Tax:	**Local taxes**	Author:	**Torlakson**
Board Position:		Related Bills:	**ACA 7 (Dutra)** **SCA 5 (Torlakson, 2001)**

BILL SUMMARY

This bill, a constitutional amendment that would require statewide majority voter approval prior to going into effect, would authorize local governments, subject to majority voter approval, to impose a special tax to fund transportation projects and services and smart growth planning.

ANALYSIS

Current Law

Under **Article XIIIA, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIIIC, Section 1, subdivision (a), of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. Under Article XIIIC, Section 1, subdivision (d), of the California Constitution, "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

The **Sales and Use Taxes Law** (Part 1, Division 2, Revenue and Taxation Code), provides that a sales tax is imposed on retailers for the privilege of selling tangible personal property at retail in this state. The use tax is imposed upon the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless specifically exempted.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, Division 2, Revenue and Taxation Code) authorizes counties and cities to impose a local sales and use tax. The local sales tax is imposed on all retailers for the privilege of selling tangible personal property at retail; the local use tax is imposed on the storage, use, or other consumption of tangible personal property purchased from any retailer.

Currently, the statewide sales and use tax and local tax rate is 7.25 percent. Of the 7.25 percent base rate, 6 percent is the state portion and 1.25 percent is the local portion. The components of the statewide base sales and use tax rate of 7.25 percent are as follows:

- 5 percent state tax is allocated to the state's General Fund (Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Revenue Fund which is dedicated to local government for program realignment (Sections 6051.2 and 6201.2 of the Revenue and Taxation Code);
- 0.50 percent state tax is allocated to the Local Public Safety Fund which is dedicated to local governments to fund public safety services (Section 35 of Article XIII of the California Constitution);
- 1.25 percent local tax of which 1 percent is allocated to city and county operations and 0.25 percent is allocated for county transportation purposes and may be used only for road maintenance or the operation of transit systems (commencing with Section 7200 of the Revenue and Taxation Code).

As previously stated, under the Bradley-Burns Law, the local tax portion is fixed at 1.25 percent. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the 1.25 percent local tax. Cities are also authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed 1.25 percent.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such a tax is approved by the voters. The transactions and use taxes are additional sales and use taxes imposed on the sale or use of tangible personal property. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1 ½ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed 1 ¾ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax at a rate of 0.25

percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

Also, under the Transactions and Use Tax Law, through specific legislation, some cities and special districts have been authorized to levy a transactions and use tax for either a general tax or a special purpose tax. Currently, there are 40 districts (cities, counties, and, special districts) that levy a transactions and use tax with tax rates ranging from 0.125 percent to 0.50 percent. The combined state, local, and transaction and use tax rates range from a low of 7.375 percent to a current maximum of 8.75 percent.

Chapter 91 (Stats. 2000, AB 2928, Torlakson) transfers the state's share of revenue from the sales tax on gasoline to a newly established Transportation Infrastructure Fund, for the five-year period from July 1, 2001 to June 30, 2006 to fund statewide transportation needs. A specified amount of the revenues in the Fund is allocated on a quarterly basis to fund specific transportation projects, and the remainder is allocated as follows: (a) 40% to the Department of Transportation (CalTrans) for capitol improvement projects in the State Transportation Improvement Program, (b) 40% to cities and counties for subventions for maintenance, rehabilitation, and reconstruction work on local streets and roads, and (c) 20% to the Public Transportation Account for transit and rail purposes.

Proposed Law

This bill would add Section 16 to Article XI of the California Constitution to allow a city, a county, a city and county, or a regional transportation agency, with the approval of the majority of the voters in the respective jurisdiction, to impose a special tax for the exclusive purpose of funding transportation projects and services and related smart growth planning. This bill states that the special tax is upon the privilege of selling one or more classes of tangible personal property at retail within the jurisdiction.

"Funding of transportation projects and services" includes the servicing of indebtedness issued for the purpose of funding such projects and services.

This bill would also provide that at least 25 percent of the revenues derived from such tax shall be used to fund smart growth planning. "Smart growth planning" means land use planning programs that conserve open space, reduce air pollution, and provide housing in close proximity to population and employment centers.

This bill defines "regional transportation agency" as the following:

- The Metropolitan Transportation Commission created by Section 66502 of the Government Code;
- The Los Angeles County Metropolitan Transportation Authority;
- The Orange County Transportation Authority; and
- Any local or regional transportation entity that is designated by statute as a regional transportation agency.

This bill would also amend Section 4 of Article XIIIA, Section 2 of Article XIIIC, and Section 3 of Article XIII D to conform to the provision that adds Section 16 to Article XI.

This Constitutional amendment must be approved by a majority of California voters. Upon passage in the Senate and Assembly, this bill would be put on the next statewide ballot.

Background

Proposition 62, passed by the voters on November 4, 1986, established new requirements for the adoption of new or higher general and special taxes by local agencies. The measure specifically required that any tax for general purposes be approved by a majority of the voters and that any tax for specific purposes be approved by two-thirds of the voters.

Two appellate court decisions in 1988 and 1991, declared Proposition 62's voter approval requirement for general taxes to be unconstitutional. However, in September 1995, the California Supreme Court overturned these earlier Court of Appeal decisions and upheld Proposition 62's voter approval requirements for local taxes. In the decision, Santa Clara County Local Transportation Authority v. Guardino (1995), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62. This decision raised important implications for other special (transportation) districts that passed transactions and use tax measures by a majority vote. Most of these measures had sunset provisions (the majority were authorized for a 20-year period), which requires voter reauthorization if the taxes are to remain in effect.

In 1991 and 1992, two court decisions declared that measures passed by the voters of San Diego and Monterey counties, which imposed a special purpose tax, failed to get the required two-thirds vote. In the decision, Rider v. County of San Diego (1991), the California Supreme Court held that the Agency (San Diego County Regional Justice Facility Financing Agency) was a special district and the transactions and use tax imposed was a special tax. Since the Agency was a special district and the transactions and use tax it imposed was special tax, the court ruled that the imposition of the tax violated Proposition 13 which requires approval of the tax by at least two-thirds of the voters.

In the decision, Monterey Peninsula Taxpayers Association v. County of Monterey (1992), the First District Court of Appeal ruled that a tax adopted under Revenue and Taxation Code Section 7285.5 was in violation of Proposition 13. Revenue and Taxation Code Section 7285.5 (subsequently amended) had authorized a county to establish an authority for specific purposes that could levy a transactions and use tax with a majority voter approval. The court found that a tax adopted under Section 7285.5, without approval of two-thirds of the voters, violated Proposition 13. Sections 7285 and 7285.5 were amended (AB 1123, Ch. 251, 2001) to add language clarifying the following: (1) Section 7285 authorizes counties to levy a transactions and use tax for general purposes; and (2) Section 7285.5 deletes the necessity of forming an authority to levy a transactions and use tax for special purposes, and requires two-thirds voter approval of a special purpose tax.

Proposition 218, passed by the voters on November 5, 1996, added Articles XIIIC and XIIID to the California Constitution. Proposition 218 requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author to allow local governments to pass or extend sales and use tax measures for funding transportation projects, with a majority voter approval. According to the author's staff, 17 California counties, representing 80 percent of California's population, have passed county-wide transactions and use taxes by a majority vote. Many of these taxes must be reauthorized within 15 to 20 years of the original vote.

   According to the author's staff, in a 1995 court decision (Santa Clara County Local Transportation Authority v. Guardino), the California Supreme Court upheld the two-thirds voter approval provision of Proposition 62, which now subjects many of the transactions and use taxes to the higher voter approval requirement when the taxes are due for reauthorization. According to the author's fact sheet, extending these taxes could generate $40 billion to $60 billion and help meet an estimated $110 billion total in unmet transportation infrastructure needs statewide.

2. **Suggested Technical Amendments.** This bill provides that a local government may impose "a special tax upon the privilege of selling one or more classes of tangible personal property at retail" as long as such tax is used for transportation projects and services and smart growth planning. The problem with using **"a special tax"** is that it does not describe the type of tax being imposed. Is it a local tax to be administered under the Bradley-Burns law or is it a transactions and use tax? The author's "fact sheet" indicates that this tax is a transactions and use tax. However, the bill does not make that clear and there is no reference to the authority under which the appropriate entity would administer the tax.

   Additionally, the language **"one or more classes of tangible personal property"** is not consistent with the existing provisions of the Sales and Use Tax Law. It appears to give the entity levying the tax the authority to exempt sales of certain classes of property when the Legislature has not provided an exemption. An entity levying the tax authorized by this bill could thus create a different tax base from that in effect in the rest of the state. Retailers outside the levying district would incur heavy administrative burdens and expenses in determining what was taxable and what was not.

   In order for the Board to administer the proposed tax under provisions consistent with existing Transactions (Sales) and Use Tax Law, it is suggested that the following language be added to this bill:

SEC. 16. (a) A city, a county, a city and county, or a regional transportation agency may, with the approval of a majority of those voters of the jurisdiction voting on the proposition, impose the following transactions and use tax within its jurisdiction, if both of the following conditions are met:

(1) The tax is imposed exclusively for the purpose of funding transportation projects and services and related smart growth planning.

(2) The city, county, city and county, or the regional transportation agency is otherwise authorized by law to impose a transactions and use tax within its jurisdiction, pursuant to Part 1.6, Division 2 of the Revenue and Taxation Code.

In addition to the suggested changes above, the following technical amendment is necessary to clarify that this tax is in addition to other state and local sales and use taxes or transactions and use taxes. Also, the Board staff suggests adding language that would provide the necessary authority for the Board to enforce and administer the tax.

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(d) (1) The tax described in subdivision (a) shall be imposed in a city, a county, a city and county, or a regional transportation agency in addition to any other state or local sales and use tax or transactions and use tax imposed in that jurisdiction in accordance with law.

(2) For purposes of this article, a transactions and use tax imposed for transportation purposes and related smart growth planning does not include any portion of a local sales and use tax that is imposed pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the Revenue and Taxation Code), or its successor.

(3) The taxes described in subdivision (a) shall be collected and administered by the State Board of Equalization, or its successor agency, pursuant to Part 1.6, Division 2 of the Revenue and Taxation Code.

The reference to Part 1.6 of the Revenue and Taxation Code is needed as that is the set of statutes that designate when the tax becomes operative, how the Board is paid for enforcing and administering the tax, when revenues are distributed, when the agreement to administer the tax must be executed, etc. Also included are provisions that must be contained in the ordinance levying the tax. Without this authority, the Board cannot administer the tax.

3. **This bill does not designate a rate.** Because no rate is designated, the local governments could impose odd tax rates (e.g., 1/6). The problem with not designating a rate or restricting the rate to multiples of 1/8 or 1/4, is that odd increments such as 1/3, 1/6, or 1/7, are difficult to administer, and present unique difficulties for taxpayers. For example, some cash registers may not be able to be programmed to calculate odd rates. Also, the difficulties encountered by the Board would result in higher administrative costs to the local jurisdictions. For these reasons, it is recommended that the bill add language to restrict the transactions and use tax rate to multiples of 1/8.

Additionally, the bill does not set a rate limitation. Does this mean that a city, county, or regional transportation agency can levy a 3 percent tax if it could persuade its voters to approve such a tax? There is nothing in the bill that prevents that from happening.

Finally, existing Transactions and Use Tax Law provides a 1.5 percent rate cap in any county, with the exception of San Francisco and San Mateo Counties that have a 1.75 and 2 percent rate cap, respectively. A provision should be added to this bill to increase, or to exempt this tax from, the rate cap provision contained in Part 1.6, Division 2 of the Revenue and Taxation Code.

Board staff is willing to work with the author's office in drafting amendments to the bill that would address these issues.

4. **This bill would change the vote requirement for local taxes.** This bill would amend the state Constitution to require a majority vote to pass or extend special taxes. Nearly all of those taxes were initially passed by a majority vote, but a subsequent court decision now requires two-thirds voter approval. This Constitutional amendment must be approved by a majority of California voters before the new voter-approval threshold could go into effect.

5. **Currently, there are 17 counties that impose a county-wide transactions and use tax for transportation purposes.** Many of these counties' transactions and use tax measures were approved by a majority vote. Of the 17 counties, 14 had measures that contained sunset provisions. The sunset dates of these taxes range from 2005 to 2011, with the exception of Alameda County. The Alameda County Transportation Authority transactions and use tax expired on March 31, 2002. Voters in Alameda County approved the Alameda County Transportation Improvement Authority transactions and use tax effective April 1, 2002, with a sunset date of March 31, 2022.

6. **Related Legislation.** ACA 7 (Dutra) would constitutionally authorize cities and counties and any regional transportation agency, subject to 55 percent of the voters of the jurisdiction, to impose a transactions and use tax for a period of 20 to 30 years, as specified, at a rate of 0.50 percent to be used exclusively for transportation purposes. The Board has not yet had a chance to take a position on this bill.

   Two bills introduced during the 2001-2002 Legislative session would have constitutionally authorized local governments to impose special taxes by a majority vote. SCA 5 (Torlakson, 2001) is almost identical to this bill. SCA 5 would have authorized local governments to impose a special tax for transportation funding and smart growth planning with the approval of a majority of the voters. SCA 13 (Alarcon, 2002) would have authorized local governments to impose a special tax to fund projects related to transportation and other local development with the approval of a majority of the voters. The Board voted to oppose both of these bills.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Counties are required to contract with the Board to perform functions related to the transactions and use tax ordinance, and reimburse the Board for its preparation costs to administer the ordinance

as well as the costs for the Board's ongoing services in actually administering the ordinance.

REVENUE ESTIMATE

To the extent that this bill makes it easier for local governments to impose or extend local transactions and use taxes, this bill, if approved statewide, would increase local government transportation revenues. The revenue impact would be specific to each local government that approved a tax.

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